

Significant evidence was adduced in that proceeding relating to NYT's offering of access to its Operations Support Systems (OSS). As a threshold matter, NYT had not even developed OSS which could be used for the ordering and provisioning of unbundled network elements. Accordingly, the technical conference reviewed only the manner in which OSS functioned (or more properly failed to function) in connection with resale.

Resellers currently use either the WEB/GUI, EIF, or the EDI interface.¹⁹ Each of those interfaces has numerous deficiencies, and none of them was shown to be in parity with the system available to New York Tel's own service representatives. Among the major deficiencies were the following:

Use of the WEB/GUI requires a "double entry" of information, once into the CLEC's own individual billing system and the second time into the GUI.

The GUI does not provide prompt acknowledgments, Firm Order Confirmations, or jeopardy notices.

Response times for pre-ordering functions are significantly greater for CLECs, with noticeable impacts on the CLECs' ability to deal with their customers.

A large number of transactions (30-33%) are not processed electronically, but must instead be handled on a manual basis. As the FCC has noted, a CLEC's reliance on a substantial amount of manual processing may violate its duty to provide equivalent access when its own retail operation processes essentially all of its orders electronically. (*Ameritech* Order, para. 196).

The data available to the CLEC in the Customer Service Record is unnecessarily difficult to use because it does not appear in a fielded format.

A CLEC does not have the ability to view service orders as they are being processed to check for errors.

A CLEC does not have access to information regarding the status or installation orders, leaving it unable to provide such information to its

¹⁹ / Only one reseller uses EIF, which is an interim measure and will be replaced by EDI.

customers.

Information on terminal location for customers in Multi-tenant environments (Binder Post) is not provided.

- Notification that a CLEC customer has moved to another CLEC is unreasonably delayed.

Service completion notices are not provided in a timely manner.

NYT accepts repair service calls from CLEC customers (instead of referring them to the CLEC) but then takes no action on them, leaving the customer out of service.

New York Tel has imposed a three to five week "certification" process as a prerequisite for permitting CLEC employees to utilize OSS, thus causing substantial delay and added costs to those CLECs.

B. NYT's Collocation Shortfalls.

New York Telephone was also shown to be unable to provision physical collocation and virtual collocation to meet the reasonable needs of its competitors. In many cases, NYT simply does not have space for physical collocation, or is unwilling to make it available unless a CLEC agrees to absorb burdensome upfront charges which can exceed \$1 million. In some of these situations, New York Telephone actually has alternate space available for physical collocation, which would not require the burdensome "buildout" required for other space. However, NYT has refused to make such other space available, insisting that the CLEC absorb the burdensome rehabilitation costs. As of yet, no virtual collocation facility has been activated, and there has been no assurance that the Company will be able to provision virtual collocation in a commercially reasonable manner.

C. NYT's Trunking Shortfalls.

New York Telephone's provisioning of interconnection trunks for its competitors has been grossly deficient. Customers have experienced inordinate delays in having such trunks provisioned; in some cases, competitors were forced to wait six months or longer for installation. Firm order confirmations for such trunks have either not been provided on a timely basis, or have not been

provided at all. Indeed, NYT even refuses to establish due dates for trunks when facilities are not available, deferring the issuance of a FOC until after it has constructed necessary facilities. New York Telephone refuses to establish routing diversity when a CLEC interconnects to its tandems. This is to be contrasted with the network redundancy and diverse routing which NYT utilizes for itself. Despite its representation to the contrary, New York Telephone does not actually provision interconnection trunks as two-way trunks when requested by a CLEC.

D. NYT's UNE Shortfalls.

New York Telephone has been unable to provision unbundled network elements, particularly unbundled loops, promptly, adequately, and in parity with the provision of service to its own customers. Indeed, certain CLECs indicated that NYT's provisioning has been so poor that CLECs have been unwilling to place orders for services they know will not be provided in a commercially reasonable manner. NYT processes all orders for ten or more unbundled loops as if new facilities must be provided in each instance, even if that is not the case. In those situations, while installation time should be equivalent to the five days for a comparable NYT retail service, the company frequently takes two to three months for installation of the unbundled loops.

E. NYT's Interconnection Agreement Shortfalls.

New York Telephone has repeatedly failed to comply with the obligations set forth in its interconnection agreements:

Earlier this year, it unilaterally announced it would no longer pay reciprocal compensation on traffic to an internet service provider. Even after the Commission directed New York Telephone to continue making such payments in May of 1997, the Company failed to comply as late as September.

New York Telephone unilaterally determined it would no longer recombine unbundled network elements at the request of a CLEC, thus forcing a CLEC to obtain virtual or physical collocation for each and every central office in which it sought to provide service to customers.

NYT failed to make the required "trueup" between its initial rates for unbundled loops and the permanent rates established by the Commission in April. In one case, it has withheld in excess of \$1 million since June.

New York Telephone has refused to provide B8ZS trunking and STS-1 interconnection.

NYT has refused to provide 64 clear channel ISDN interconnection at its tandems, while vigorously marketing ISDN services to its own customers.

F. NYT's Number Portability Shortfalls.

NYT has been unable to provide Interim Number Portability on a commercially reasonable basis. CLEC representatives have given numerous examples of changed implementation times, incomplete jobs, disconnection of working lines, and other errors that have caused cutovers to be considered a debacle. Even when the fault lies with NYT, it falsely blames the CLEC, and CLECs have lost a number of their customers as a result.

NYT provisions identical services more quickly to its own customers than it does for CLECs. For example, in one instance where a CLEC requested a private line between Brooklyn and Manhattan, NYT indicated there was a "facilities problem" and delayed providing the service for many weeks. However, when the customer contacted NYT directly and requested installation of the identical service (as an NYT customer), it was provided immediately.

As another example, a CLEC instructed its customer to call NYT to ask how long it would take to install residential service. The answer was four hours. However, when the CLEC then called NYT and asked for installation of the same line for resale, a seven day due date was given.

NYT's provisioning of private line circuits, which are frequently used by competitors to supplement their own networks, has been abysmal. Service quality complaints were filed by Teleport in October of 1995 and by AT&T in June of 1996. In August, 1996, the Commission Staff concluded NYT's performance on special services "was declining, often precipitously", and the Commission

directed NYT to submit a "comprehensive plan to restore service quality for special services to previous acceptable levels."^{20/}

Unfortunately, NYT failed to correct the situation, and it had become so bad that on August 29, 1997, the Commission was forced to issue another order on the same subject. Thus, one year later, it issued its "Order Directing Improvements in the Service Quality of Special Services", which noted the continuing unacceptable level of service, and the fact that little had changed over the past year in NYT's failure to correct its deficiencies. Pointedly, the Commission took the extraordinary step of informing NYT "that its failure to improve in these areas will be considered in the Commission's evaluation of the Company's treatment of its competitors for a variety of purposes, including ... its "compliance with the competitive checklist for long distance entry under § 271 of the Telecommunications Act ...". ^{21/}

In the 132 LATA, critical NYT tandems are out of capacity, thus preventing CLECs from interconnecting their network at those points. NYT billing mechanisms are deficient. At least two carriers have experienced situations where NYT end user calls to CLEC customers should be rated as local calls, but are billed as toll calls. Those callers complain to the CLEC customers, and the CLEC's goodwill is significantly undercut.

G. New York Telephone's Conduct Is A Reflection Of Its Inherent Conflict Of Interest.

The conduct described above is merely illustrative of New York Telephone's inability -- or unwillingness -- to provide the type of services and facilities necessary for competitors to enter into

^{20/} Case 92-C-0665, "Order Requiring Service Quality Improvement Plan for Special Services, August 30, 1996.

^{21/} See Case 92-C-0665, Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Telephone Company, "Order Directing Improvements in the Service Quality of Special Services," August 29, 1997, at p. 2.

and succeed in the local exchange market. It does not represent the conduct which would be expected of a commercially reasonable provider of service intent on meeting the needs of its customers. Instead, it reflects what would be expected of a monopolist seeking to preserve its customer base by refusing to provide the interconnection services necessary for its competitors to function.

As described in LCI's FCC Petition, it is the current structure of New York Telephone as both a wholesale provider to its competitors, and as a retail provider to its own customers, which underlies the company's failure to provide the services necessary to enable competitors to succeed in the local exchange market.

Even the incentive to obtain Section 271 approval has not been sufficient to remove this conflict of interest. Even if New York Telephone were to meet the checklist eventually, the success could well be only temporary in nature. Once the ultimate prize of interLATA authority has been obtained, the Company would be able to revert to its old practices and even reverse whatever progress it had made in opening local markets to competition. As a practical matter, the resources needed for the continued monitoring and enforcement proceedings, which will unquestionably be necessary once NYT provides combined local and toll service, simply may not be available to this Commission, other regulators, and the competitors themselves.

LCI believes that a recasting of the current structural relationships could result in reforming New York Telephone's current corporate policies and method of operation. For the reasons set forth in the LCI federal Petition, the solution to achieving the necessary reform is to substantially reduce the inherent conflict of interest which New York Telephone faces as both a wholesale and retail supplier.

Accordingly, LCI urges this Commission to take the steps necessary to implement the "Fast Track" plan proposed in the LCI Petition filed at the FCC. This Commission also should investigate

whether LCI's structural approach would be appropriate in a post-interLATA entry environment, even if New York Telephone decides to pursue another route to obtain Section 271 approval. It is time for the Commission to consider how it will regulate New York Telephone in a post-entry world.

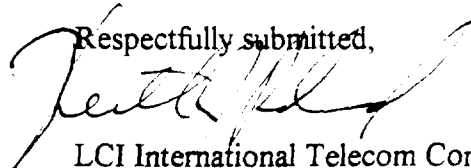
VI. CONCLUSION/RELIEF REQUESTED

LCI has set forth, in its FCC petition, a mechanism that can be employed to assure local exchange markets are opened to competition, particularly for residential customers, and that New York Telephone can thereby move quickly to demonstrate its satisfaction of the requirements of Section 271. The problems identified in the LCI petition, and the implementation of a corporate restructure as a remedy, are particularly applicable in New York.

Even if New York Telephone disclaims interest in LCI's proposal, this Commission will still be required to establish the ground rules and regulatory requirements governing New York Telephone's operations and structure in the post § 271 environment, including consideration of whether to impose a structural approach such as that set forth in LCI's petition. The Commission should initiate a proceeding designed to accomplish both these objectives.

LCI respectfully urges the Commission to move promptly to consider these matters. The sooner that the Commission clears the path to a "Fast Track" solution, the sooner it finally can meet

its long-standing goal of achieving open and competitive markets, for all services and all consumers in New York.

Respectfully submitted,

LCI International Telecom Corp.

Anne R. Bingaman
Douglas W. Kinkoph
LCI International Telecom Corp.
8180 Greensboro Drive, Suite 800
McLean, VA 22102

By: Keith J. Roland
Roland, Fogel, Koblenz & Petroccione,
LLP
1 Columbia Place
Albany, New York 12207

Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, D. C. 20004

Rocky N. Unruh
MORGENSTEIN & JUBELIRER
One Market
Spear Street Tower, 32nd Floor
San Francisco, CA 94105

Eugene Cohen
326 West Granada Road
Phoenix, AZ 85003

Dated: January 26, 1998

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On its Own Motion :
 :
Notice of Inquiry Concerning the :
Separation of Illinois Bell Telephone :
Company's Retail Operations from its Monopoly :
Network Operations as a means of Expediting :
Local Competitive Entry :

Resolution

By the Commission:

WHEREAS, on February 8, 1996, the United States Congress enacted the Federal Telecommunications Act of 1996 (P.L. 104-104), making sweeping changes in the Communications Act of 1934 (the "Federal Act");

WHEREAS, the expressly stated policies of both the Federal Act and the Illinois Public Utilities Act are to open all telecommunications markets to competition;

WHEREAS, under the Federal Act, upon application to the Federal Communications Commission ("FCC") and demonstration that Ameritech Illinois has opened its local markets to competition by meeting the requirements contained in section 271 of the Federal Act, as amended, Ameritech Illinois could be authorized to provide in-region interLATA service by the FCC;

WHEREAS, on January 22, 1998, LCI International Telecom Corp. ("LCI") filed with the FCC a Petition requesting the FCC to explore whether a structural separation arrangement for Bell Operating Company's retail operations and network operations could reduce or eliminate the inherent conflicts of interest that the Petition states underlie the current barriers to local competitive entry, especially in residential local markets, and could expedite a Bell Operating Company's entry into the provision of in-region interLATA services;

WHEREAS, LCI has announced that it is prepared to file its Petition before this Commission;

WHEREAS, the Commission believes that the best manner in which to address the underlying issues implicated by LCI's proposal is to initiate an inquiry into whether, and the extent to which, a separation of Ameritech Illinois' retail operation from its network operations could expedite competitive entry in all telecommunications markets, and if so, what types of separations should be considered;

WHEREAS, the Commission's Notice of Inquiry procedure, as outlined in 2 Ill. Adm. Code Part 1700, is an appropriate mechanism to collect the views and information from the telephone industry, consumer interest groups, and Commission Staff, in which the Commission is vitally interested;

IT IS THEREFORE RESOLVED that the Executive Director is authorized and directed to initiate a Notice of Inquiry pursuant to 2 Ill. Adm. Code Part 1700, Subpart D to address the foregoing issues.

Adopted by the Commission this 18th day of February, 1998.

(SIGNED) DAN MILLER

Chairman

(SEAL)

FILED

FEB 11 1998

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA
 COURT CLERK'S OFFICE - OKC
 CORPORATION COMMISSION
 OF OKLAHOMA

NOTICE OF INQUIRY OF THE OKLAHOMA)
 CORPORATION COMMISSION INTO THE)
 STATUS OF LOCAL TELEPHONE EXCHANGE) Cause No. RM 980000004
 COMPETITION IN OKLAHOMA AND WHAT)
 IF ANY STEPS NEED TO BE TAKEN TO)
 IMPROVE OR ENCOURAGE COMPETITION)

NOTICE OF INQUIRY

Two years ago when the Telecommunications Act of 1996 ("the Act") was signed into law¹, advocates touted the Act as a way of forcing improvements in the nation's telecommunications infrastructure, while simultaneously enhancing the U.S. position in the world market place. The Act was also touted as providing consumers with greater choices and control over their telecommunications needs while also advancing the national goal of universal service. It was believed by some supporters of the Act that competition would force providers of telecommunications services to maintain and upgrade existing telephone plant and equipment in order to maintain existing customers and/or attract new consumers. Additionally it was hoped that competition in the local exchange market would drive prices downward much like the price reductions that occurred in the long distance market after the introduction of competition.

Prior to the Act, consumers lacked the ability to select a telecommunications service provider other than the incumbent local exchange carrier. In essence, the incumbent monopoly local exchange provider determined what services would be offered and when the services would be available. The Act did in fact remove the legal barriers to competition and offered consumers the hope of selecting a carrier that offered the services sought by individual consumers.

¹ 47 U.S.C. § 151 et. seq.

On March 8, 1996, a year and a half after the Oklahoma Corporation Commission ("Commission") issued its notice of inquiry to gather information on local exchange competition, the Commission approved state-specific rules aimed at implementing the Act, addressing the uniqueness of Oklahoma and facilitating local exchange competition.² The Commission's rules were thereafter submitted to and approved by the Governor and State Legislature. Since that time, the Commission has met all of the obligations placed on the Commission by the Act, FCC's First Report and Order and House Bill 1815. Additionally, over the past two years the Oklahoma Corporation Commission has approved numerous interconnection agreements between new local competitors and the existing local exchange companies, set interim prices for interconnection, and is on schedule to complete the process of establishing permanent interconnection rates for all non rural exchanges. It was hoped by many advocates that with new legislation and rules in place, the goals and promises of competition would be realized. However, two years after passage of the Act and the Commission's rules, the goals and promises of competition have not been realized locally or nationally. Additionally, the Commission has taken the initiative to facilitate meetings between the incumbent local exchange companies and competitive local exchange companies, in the hope of addressing any concerns that may have occurred during implementation of the parties' interconnection agreements.

The Commission is well aware of the importance of strong effective local exchange competition in Oklahoma. The Oklahoma Corporation Commission supports the development of effective competition and the development of opportunities for all telecommunication companies and customers alike. It is the belief of the Commission that when venturing into uncharted territory there will be an initial course of action, but this will be followed with review,

² Oklahoma Administrative Code 165:55

modifications and revisions, if it is found that the ultimate goal (in this case effective local exchange competition) will not be met. Therefore, the purpose of this Notice of Inquiry is twofold. The Notice of Inquiry will serve as a "report card" of sorts on the status of competition in Oklahoma and serve to facilitate "course" modification to encourage meaningful, effective local exchange competition and where appropriate offer incentives to encourage market entry. The Federal Communications Commission ("FCC") stated that the state commissions have been provided a set of rules which the states must build upon to facilitate competition.³ Therefore, the Commission requests the assistance of representatives from all segments of the market and the general public to assist the Commission in facilitating a course modification aimed at facilitating meaningful local exchange competition. It is the Commission's position that in order to address all of the relevant and important issues and to chart a course that will truly bring about meaningful, effective competition, the Commission must hear from all interested parties. Therefore, the Commission is hereby establishing a collaborative process and requests comments to the following questions:

1. Do you believe that effective local exchange competition exists anywhere in the United States, including Oklahoma?
2. If your answer to question #1 is no, what do you think is preventing effective local exchange competition from being achieved and if your answer is yes, what factors facilitated competition?
3. Are there incentives that could be adopted by the Commission which would encourage the development of effective local exchange competition?

³ FCC First Report and Order, CC Docket No. 96-98 para. No 363

4. What steps, if any, do you believe the Commission should take to help facilitate meaningful effective local competition?
5. Should the Oklahoma Corporation Commission consider incentives for the LEC monopolies to structurally separate their operations?
6. If separation were possible, how would that affect the need for continued regulation and the development of competition?
7. Should the Commission issue rules to address affiliated transactions, in a competitive environment?
8. What safeguards should the Commission consider to prevent possible abuses or discriminatory actions between affiliates?
9. Should every company that provides local and toll services be required to provide such services through a structurally separate affiliate?
10. Are there portions of the Act or the Commission's rules that hamper the development of effective competition? If so, please identify the relevant portion(s).
11. Have there been any ruling(s) by the Commission that served to hamper competition? If so, please identify the ruling(s).
12. In your opinion, are economic factors the overriding factor in a company's decision whether to compete in the local exchange market in Oklahoma?
13. Please identify the economic factors that potential competitive local exchange providers must consider when deciding when and if to provide local exchange services in Oklahoma.
14. Of the economic factors listed in question #13, over how many of those factors does the Commission have control?

15. Please identify the operational factors that impact a potential competitor's entrance into the local exchange market.
16. Of the operational factors listed in question #15, over how many of those factors does the Commission have control?
17. Are the incumbent local exchange carriers creating barriers to competition? If so, please identify the barriers.
18. Would performance standards assist in the facilitation of competition?
19. If your answer to question #18 is yes, please identify the performance standards the Commission should consider.
20. Have any of the Interconnection Agreements approved by the Commission contained any service standards? If so, please identify the agreement and the specific portions of it.
21. Are there any incentives the Commission could offer to encourage competition in rural exchanges?
22. Are there incentives that a community can offer to attract competition in rural exchanges?
23. What action(s) can the Commission take to guarantee that rural communities receive all of the benefits of competition?
24. In your opinion, would a more "hands on" approach by the Commission help facilitate competition?
25. Would regularly scheduled round table discussions between the various parties assist in working through any of the issues and therefore facilitating competition?
26. Do you believe that regardless of any efforts by the Commission, effective local exchange competition will be slow to develop in Oklahoma?

27. Has the FCC provided any guidance to states on possible ways to encourage competition?
28. Are there any FCC orders that when combined with the Commission's local competition rule, hinder the development of competition?
29. Would a joint FCC and Oklahoma Commission round table discussion assist in facilitating competition.
30. Has the FCC established any performance standards that might assist the Commission?
31. Are there rules in other jurisdictions that if implemented, would assist the Commission in facilitating local competition?
32. Are there any other relevant issues the Commission should consider in this docket?

NOTICE IS HEREBY GIVEN that the Commission invites all interested parties to submit comments to the questions above. Those persons interested in submitting comments should file an original and eight (8) copies of their comments, referring to RM 980000004, with the Commission's Court Clerk's Office, P.O. Box 52000-2000, Oklahoma City, Oklahoma 73152-2000 on or before March 10, 1998. All comments will be available for public inspection during regular business hours of the Court Clerk's Office, 8:00 a.m. to 4:30 p.m.

In order to assist Staff in summarizing the comments for the Commission, it is requested that the comments also be submitted on diskette. *Such diskette submissions are to be in addition to and not a substitute for the formal filing requirements addressed above.* The diskette should be a 3.5 inch diskette, formatted in an IBM compatible form, using Microsoft Word for Windows or compatible software. The diskette should be clearly labeled with Cause No. RM 980000004, and the name of the submitting party. *Do not submit the diskette to the Court Clerk's Office.* The diskettes should be sent to Cece Coleman, Assistant General Counsel, Office of General

Notice of Inquiry
Page 7

Counsel, 4th floor, Room 400, Jim Thorpe Building, 2101 N. Lincoln Blvd., or P.O. Box 52000-2000, Oklahoma City, Oklahoma 73152-2000.

NOTICE IS FURTHER GIVEN that a Technical Conference/ round table discussion will be held on March 13, 1998, at 9:30 a.m. in Courtroom 301, Third Floor, Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma or as otherwise posted. Additional technical conferences/ round table discussions may be held as needed. All interested parties are encouraged to attend and participate in all meetings held in this Notice of Inquiry. The Commissioners may be present and enter into dialogue with the inquiry participants regarding issues in the proposed Notice of Inquiry.

NOTICE IS HEREBY GIVEN that the Commission invites all interested parties to submit reply comments to the questions above. Those persons interested in submitting reply comments should file an original and eight (8) copies of their comments, referring to RM 980000004, with the Commission's Court Clerk's Office, P.O. Box 52000-2000, Oklahoma City, Oklahoma 73152-2000 on or before April 1, 1998. All comments will be available for public inspection during regular business hours of the Court Clerk's Office, 8:00 a.m. to 4:30 p.m.

NOTICE IS FURTHER GIVEN that a hearing has been set for April 8, 1998, at 9:30 a.m. in Courtroom 301, Third Floor, Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma before the Commission en banc, to address the merits of this Notice of Inquiry.

NOTICE IS FURTHER GIVEN that all questions regarding this Notice of Inquiry should be addressed to Cece Coleman, Assistant General Counsel, Office of General Counsel, P.O. Box 52000-2000, Oklahoma City, Oklahoma 73152-2000, (405) 521-2308 or C.Coleman@occmil.occ.state.ok.us for E-mail or Sheree King of the Telecommunications

2-12-1998 3:20AM

FROM

Notice of Inquiry
Page 8

Section, Public Utility Division, P.O. Box 52000-2000, Oklahoma City, Oklahoma 73152-2000.

(405) 522-3352 or s.king@occmil.occ.state.ok.us for E-mail..

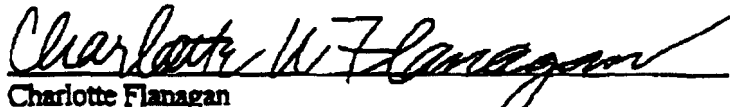
CORPORATION COMMISSION OF OKLAHOMA


Ed Apple, Chairman


Bob Anthony, Vice Chairman


Denise A. Bode, Commissioner

DONE AND PERFORMED this 11th day of February, 1998.
BY ORDER OF THE COMMISSION:


Charlotte Flanagan
Commission Secretary